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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA,
SACRAMENTO DIVISION

ANDREW R. LOPEZ,

Plaintiff,

v.

D. PETERSON, et al.,

Defendants.

No. 2:98-cv-2111-MCE-EFB P

**STIPULATION AND ~~PROPOSED~~
ORDER TO RESCHEDULE
STATUS CONFERENCE**

Under Federal Rules of Civil Procedure 16(b)(4) and Local Rule 143, the parties, through their counsel of record, agree to and request a continuance of the

status conference currently scheduled for Wednesday, March 2, 2016, to Wednesday, March 30, 2016. Good cause exists to grant this stipulation because plaintiff Andrew Rick Lopez was unexpectedly transferred from his 15 year placement at Corcoran State Prison to Pelican Bay State Prison (PBSP) at the conclusion of his trial

1 in *Lopez v. Cook*, 1:03-cv-01605 KJM EFB, late last month while he was still placed
2 temporarily at California State Prison, Sacramento, as an “out to court” inmate. While
3 he has been transferred to PBSP, his legal property has not reached him yet. Secondly,
4 plaintiff’s counsel was unable to visit his client on Tuesday, February 16, as had been
5 planned, because Legal Visiting at PBSP states it cannot clear counsel for legal visitation
6 until a technical discrepancy on his background check is resolved, even though counsel
is currently cleared at other California prisons, including Corcoran.

7 A scheduling order may be modified only upon a showing of good cause and by
8 leave of Court. Fed.R.Civ.P. 6(b)(1)(A), 16(b)(4); see, e.g., *Johnson v. Mam-moth*
9 *Recreations, Inc.*, 975 F.2d 604, 609 (describing the factors a court should consider in
10 ruling on such a motion). In considering whether a party moving for a schedule
11 modification has good cause, the Court primarily focuses on the diligence of the party
12 seeking the modification. *Johnson*, 975 F.2d at 609 (citing Fed.R.Civ.P. 16 advisory
13 committee’s notes of 1983 amendment). “The district court may modify the pretrial
14 schedule ‘if it cannot reasonably be met despite the diligence of the party seeking the
amendment.’” *Id.* (quoting Fed.R.Civ.P. 16 advisory committee notes of 1983 amend-
ment).

15 The clearance issue has to do with a misdemeanor arrest of counsel, Robert
16 Navarro, in October 2011, as part of a civil disobedience protest organized by Occupy
17 Fresno. Approximately 109 misdemeanor arrests were made during a six week period
18 during the Occupy Fresno protest. Counsel was the lead attorney for Occupy Fresno,
19 which filed a civil rights lawsuit against Fresno County. The lawsuit was settled in
20 2012. As part of the settlement in the case, the parties agreed that the Fresno County
21 District Attorney would not prosecute any of the Occupy Fresno arrests, including
22 mine. The settlement was approved by the Hon. Charles R. Breyer (sitting by
23 assignment). See, *Occupy Fresno v. County of Fresno*, 1:11-cv-01894, Doc. 121, p. 7, ¶ F

1 [approved settlement agreement, "Non-prosecution" clause]. Thus, no prosecution
2 ever occurred regarding counsel's misdemeanor citation.

3 Attorney Visiting at PBSP has informed counsel that even though they
4 understand that the civil case settlement resolved the misdemeanor arrest, the criminal
5 records background check shows that there was an arrest in 2011, but it does not
6 indicate any disposition. Counsel has been instructed to have the disposition supplied
7 to the California Department of Justice so that the background check will show that
8 matter was "dismissed" or disposed of in some manner without conviction.

9 Counsel has followed all the suggestions made by PBSP, including inquiries to
10 the Fresno County Sheriff's Office, the federal court (including an email directly to
11 Judge Breyer's chambers), and with the Fresno County District Attorney's Office. None
12 of these contacts have resulted in resolving the matter. Counsel, with the assistance of
13 defendants' counsel, has contacted persons in the California Department of Justice who
14 may be able help counsel to satisfy the request of PBSP. Counsel is currently awaiting a
15 response from these contacts.

16 Counsel has reviewed the *Peterson* litigation and is prepared to discuss the status
17 of the case going forward with plaintiff, however, for the moment he has no access to
18 his client. Counsel was informed by PBSP that even confidential telephone calls cannot
19 be permitted until the clearance issue is resolved.

20 Consequently, the parties stipulate to a 28 day continuance of the status
21 conference in this case in order to allow time for counsel's clearance and an opportunity
22 to meet and confer with his client regarding this case.

23 IT IS SO STIPULATED.

Dated: February 17, 2016

/s/Robert Navarro
ROBERT NAVARRO
Attorneys for Andrew Rick Lopez

1 Dated: February 17, 2016

KAMALA D. HARRIS
Attorney General of California
CHRISTOPHER J. BECKER
Supervising Deputy Attorney General

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5 By: /s/Diana Esquivel
DIANA ESQUIVEL
Deputy Attorney General
Attorneys for Defendants
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8 **ORDER**

9 Based on the parties' stipulation and good cause appearing, it is ordered that:

10 The status conference currently scheduled for Wednesday, March 2, 2016, be
11 moved to Wednesday, ~~March 30~~ April 6, 2016, for the purpose of facilitating plaintiff's
counsel's clearance at PBSP and visitation with his client.

12 IT IS SO ORDERED.

13 Dated: February 22, 2016.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE
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